

**United States Department of Labor
Employees' Compensation Appeals Board**

L.R., Appellant

and

**U.S. POSTAL SERVICE, MCLEAN MAIN
POST OFFICE, McLean, VA, Employer**

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**Docket No. 20-1447
Issued: April 7, 2021**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER DISMISSING APPEAL

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On December 10, 2019 appellant, through counsel, filed a timely appeal from a November 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). By the November 8, 2019 decision, an OWCP hearing representative affirmed a June 13, 2019 decision, which finalized the termination of appellant's wage-loss compensation and medical benefits, effective June 13, 2019, because the medical evidence of record had established that appellant no longer had residuals or disability causally related to her accepted October 7, 2015 employment injury of left ankle sprain. The hearing representative also determined that the medical evidence of record was insufficient to establish that the acceptance of appellant's claim should be expanded to include the additional conditions of Achilles tendinitis and complex regional pain syndrome (CRPS)/reflex sympathetic dystrophy (RSD) of the left foot. The Clerk of the Appellate Boards docketed the appeal as No. 20-0393.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

During the pendency of the appeal in Docket No. 20-0393, OWCP also issued a January 9, 2020 decision, which denied appellant's claim for an increased schedule award, finding that she had not met her burden of proof to establish more than two percent permanent impairment of her left lower extremity, for which she previously received a schedule award.² By decision dated June 18, 2020, an OWCP hearing representative affirmed the January 9, 2020 decision.³ On July 28, 2020 appellant, through counsel, filed a timely appeal from the January 9, 2020 merit decision, to which the Clerk of the Appellate Boards assigned Docket No. 20-1447.

The Board's *Rules of Procedure*, at section 501.2(c)(3), provides:

"The Board and OWCP may not exercise simultaneous jurisdiction over the same issue in a case on appeal. Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue on appeal until after the Board relinquishes jurisdiction."⁴

The Board, having duly considered the matter, notes that OWCP was properly developing the issue of whether appellant sustained additional conditions causally related to the accepted October 7, 2015 employment injury, prior to the issuance of its January 9 and June 18, 2020 decisions.⁵ However, once appellant filed the Board appeal on December 10, 2019 in response to OWCP's November 8, 2019 decision, which terminated appellant's wage-loss compensation and medical benefits and denied expansion of the acceptance of appellant's claim to include additional conditions, OWCP had no jurisdiction to issue its January 9 and June 18, 2020 decisions as the expansion issue was related to whether appellant was entitled to an increased schedule award.⁶ Consequently, the January 9 and June 18, 2020 decisions are null and void.⁷

Pursuant to 5 U.S.C. § 8149 and 20 C.F.R. §§ 501.2(c) and 501.3(a), the Board's jurisdiction is limited to review of final adverse decisions of OWCP issued under the Federal

² A decision under Docket No. 20-0393 will be issued separately.

³ A telephonic hearing was held on May 5, 2020. Appellant's attorney argued that once OWCP expanded appellant's case to include additional conditions, appellant would be entitled to an increased schedule award. Appellant subsequently submitted medical evidence in support of her request to expand the acceptance of her claim.

⁴ 20 C.F.R. § 501.2(c)(3). *See also M.S.*, Docket Nos. 19-1090 & 20-0408 (issued April 20, 2020); *J.W.*, Docket No. 19-1688 (issued March 18, 2020); *George Simpson*, Docket No. 93-0452 (issued February 18, 1994); *Arlonia B. Taylor*, 44 ECAB 591 (1993) (Member, Groom concurring in part and dissenting in part); *Douglas E. Billings*, 41 ECAB 880 (1990).

⁵ *M.S.*, and *Douglas E. Billings*, *supra* note 4.

⁶ *See L.W.*, Docket No. 19-0722 (issued November 20, 2019) (the Board remanded the case for further development of the medical evidence regarding whether the acceptance of a claim should be expanded to include a consequential injury. The Board further determined that it was premature to address the second issue of whether the claimant was entitled to an increased schedule award of the left lower extremity until the issue of additional conditions was resolved).

⁷ The Board has held that decisions that change the status of a decision on appeal are null and void. *Id.* *See Order Dismissing Appeal, T.T.*, Docket No. 20-0864 (issued December 17, 2020); *see also G.W.*, Docket No. 19-0260 (issued July 10, 2020); *Cathy B. Millin*, 51 ECAB 331 (2000).

Employees' Compensation Act. As the January 9 and June 18, 2020 decisions are null and void, the appeal assigned Docket No. 20-1447 does not contain a final adverse decision over which the Board may properly take jurisdiction. Therefore, the Board finds that the appeal docketed as No. 20-1447 is dismissed. Accordingly,

IT IS HEREBY ORDERED THAT the appeal docketed as No. 20-1447 is dismissed.

Issued: April 7, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board